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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
SERGIO GARCIA,)
)
vs.) No. 13-0542
)
COMMONWEALTH EDISON COMPANY)
)
Complaint as to false accusations)
of tampering with meters and)
billing/charges in Chicago,)
Illinois.)

Chicago, Illinois
February 19, 2015

Met pursuant to notice at 11:00 a.m.

BEFORE:

MR. JOHN T. RILEY, Administrative Law Judge.

1 APPEARANCES:

2 MR. MOSA A. ELMOSA
7265 West 87th Street

3 Bridgeview, Illinois 60455

4 Appearing on behalf of the Complainant
(Telephonically);

5 GRAHAM & GRAHAM, LLP, by

6 MS. REBECCA A. GRAHAM

115 North LaSalle Street, Suite 2600

Chicago, Illinois 60603

7 Appearing on behalf of Commonwealth Edison
Company.

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ALSO PRESENT:

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Ms. Erin Beuchler, Commonwealth Edison Company

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SULLIVAN REPORTING COMPANY, by

22 Tracy L. Overocker, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None	so	marked.

1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission, I call Docket 13-0542.
3 This is a complaint by Sergio Garcia versus
4 Commonwealth Edison Company as to false accusations
5 of tampering with meters and billing charges in
6 Chicago, Illinois.

7 Mr. Elmosa, would you enter an
8 appearance for the record stating your name and
9 office address.

10 MR. ELMOSA: For the record, Mosa Elmosa,
11 E-l-m-o-s-a, address 7265 West 87th Street in
12 Bridgeview, Illinois. Phone number is (708) 430-8706
13 for the complainant.

14 JUDGE RILEY: And for the respondent?

15 MS. GRAHAM: On behalf of Commonwealth Edison
16 Company, Rebecca Graham, 115 South LaSalle Street,
17 Suite 2600, Chicago, Illinois 60603. My telephone
18 number is (312) 505-8154. And with me this morning
19 is Erin Beuchler from ComEd.

20 JUDGE RILEY: Thank you. And to begin with,
21 Miss Graham, you have a couple of motions pending.
22 One was to compel the complainant to file testimony

1 and the other one was to bar testimony after it had
2 not been filed. I have done some, I don't know, soul
3 searching over both the motions and one, I don't -- I
4 did send out an ALJ ruling compelling the filing of
5 the testimony. Counsel did not file it and I have
6 since come to the conclusion that I would have to
7 really rescind that order. I do not believe that I
8 have the power or the authority to compel the filing
9 of testimony and, consequently, I would have to deny
10 your motion to bar the filing of -- bar his testimony
11 now because I don't believe I also have that
12 authority.

13 That being taken care of then,
14 Mr. Elmosa, the -- I have finally found something in
15 the Secretary of State's database. The actual name
16 of the corporation that we're dealing with here is
17 Super Mexi, M-e-x-i, Corporation and Mr. Garcia is
18 listed as the agent.

19 MR. ELMOSA: Super Mexi Corporation?

20 JUDGE RILEY: Right.

21 MR. ELMOSA: Yes, Sergio Garcia is registered
22 agent; Spiros Polymenaros --

1 JUDGE RILEY: Right.

2 MR. ELMOSA: Is the president -- current
3 president's name, but Sergio is also an officer of
4 the company.

5 JUDGE RILEY: He is --

6 MR. ELMOSA: And there's also another one who
7 is Saed Hamad (phonetic) -- Saed -- what's the last
8 name -- Haffa -- that is also an owner of the
9 company.

10 JUDGE RILEY: Do you know what Mr. Garcia
11 position is? What his title is?

12 MR. ELMOSA: I don't know. I think he's vice
13 president or secretary, but I don't know for sure;
14 but he's somebody registered, I think, currently on
15 the Secretary of State Web Site.

16 JUDGE RILEY: Right. That's what it says. And
17 you're sure that he is an officer?

18 MR. ELMOSA: If you want to give me 2 minutes,
19 I can verify that.

20 JUDGE RILEY: All right.

21 MR. ELMOSA: Give me one second, please.

22 (Discussion off the record.)

1 MR. ELMOSA: Hello?

2 JUDGE RILEY: Yes.

3 MR. ELMOSA: Sergio Garcia, as I understand, he
4 is the president; Spiros is the vice
5 president/secretary of the company.

6 JUDGE RILEY: Okay. What was the name of the
7 third person that you said was also an officer?

8 MR. ELMOSA: S-a-e-d, last name
9 M-o-h-a-m-m-a-d. He is not an officer, what he is is
10 he's the general manager of the store.

11 JUDGE RILEY: All right.

12 MR. ELMOSA: But he's not part of the -- as an
13 officer of the company.

14 He was listed on our production
15 documents as a witness.

16 JUDGE RILEY: Thank you. What we need now is I
17 need a motion from you to amend the app- -- to amend
18 the complaint reflecting that Super Mexi Corporation
19 is the proper name -- is the proper complainant.

20 MR. ELMOSA: Okay.

21 JUDGE RILEY: Go ahead.

22 MR. ELMOSA: No, that's fine. I think I

1 prepared -- but I think they sent it back to me, they
2 said -- I think I just had -- I think didn't do the
3 motion properly, so I have the motion so I can file
4 it, you know, relatively quickly, by tomorrow.

5 JUDGE RILEY: Okay. Well, just anything that's
6 sent to the Clerk's Office has to have an original
7 signature and it has to -- I'm not sure if it has to
8 be verified or not, but it --

9 MR. ELMOSA: I'll have it verified.

10 JUDGE RILEY: Yeah. And it does have to have
11 an original signature.

12 MR. ELMOSA: Okay.

13 JUDGE RILEY: Now, with that said, we are
14 proceeding in violation of a statute because we have
15 long since past the one year deadline for these
16 matters and I know that this matter was extended
17 once, but we're substantially past that now. Would
18 it be possible for the parties to execute another
19 agreement for at least 60 days? And when I say
20 "would it be possible," it actually is necessary.

21 MS. GRAHAM: Yes, Judge, we can do that.

22 MR. ELMOSA: That's fine with me.

1 JUDGE RILEY: And now, Mr. Elmosa, you said
2 your witness was not able to make it to the morning
3 version of this hearing and you had requested we go
4 till 2:00 o'clock this afternoon and I found out from
5 Commonwealth Edison that they're not available this
6 afternoon. How did you -- did your witness miss the
7 train?

8 MR. ELMOSA: I don't know if he missed the
9 Amtrak train, he's coming in from, I think, from
10 Milwaukee and I think there was one coming in at
11 8:00 o'clock and he would have been here by 10:30 or
12 something and he called me and he said -- I think
13 either he had missed it or the train didn't work this
14 morning or something, there was something, but he
15 missed that first train and he was going to get on
16 the next train and he would arrive here by 12:30.

17 JUDGE RILEY: All right. Here's the situation,
18 I'm going to give the complainant one more crack at
19 this. I'm going to give him one more date and it's
20 going to be a make or break date to present a witness
21 and to wrap this matter up. Counsel?

22 MR. ELMOSA: Sure.

1 MS. GRAHAM: Judge, I just want to point out
2 for the record that this is the second time this has
3 happened. The last time we had a hearing date, we
4 were here with five representatives from ComEd ready
5 to put on their case and, you know, we've expended an
6 extraordinary amount of time dragging this thing out
7 due to complainant's repeated failures to comply with
8 your orders. So, I mean, if we want to have another
9 date, fine; but I think it's only fair that we know
10 exactly who is going to be at the hearing that either
11 Sergio Garcia or, you know, some other representative
12 of the company be here. We haven't even seen a
13 representative of the company since this thing has
14 been filed, you know, and that's kind of why we asked
15 for the written testimony is because we need to be
16 able to be prepared for rebuttal and for cross. So,
17 I mean, if Counsel would agree to file written
18 testimony, that would certainly be helpful. If he
19 won't agree to that, at the very least, I think it
20 needs to be clear who he's going to show up with at
21 this next hearing date.

22 MR. ELMOSA: Well, we had already disclosed the

1 witnesses. I don't think anything has changed.
2 There will be approximately two witnesses for sure,
3 which is Paul Hanson, the expert and Saed Mohammad,
4 general manager and possibly Sergio Garcia but I
5 understand from Sergio Garcia that he spends a lot of
6 time back home in Mexico and he leaves everything up
7 to Saed, so I won't anticipate -- I don't anticipate
8 Sergio showing up as I think the general manager
9 knows more information than Saed does -- then Sergio
10 does. So I would only assume there will be only two
11 witnesses.

12 JUDGE RILEY: Is it possible that you could
13 file prefile testimony?

14 MR. ELMOSA: In regards to Mr. Hanson, we
15 already filed the report that he prepared, but I
16 haven't talked to my client about preparing the
17 actual written report. I mean, I don't -- for the
18 other witness, so at this time, I can't agree to
19 that.

20 JUDGE RILEY: Well, it's -- Counsel makes an
21 excellent point is that they have to have a chance to
22 prepare and they have to have some idea what these

1 people are going to testify to so they know who to
2 bring in for rebuttal, if necessary. It's just a
3 matter of due process.

4 MR. ELMOSA: Well, I can give them a rough
5 outline of what -- but they already know what Paul
6 Hanson is going to testify to. There is a report, a
7 final report that he had prepared.

8 MR. GRAHAM: So you're saying his only
9 testimony is going to be as to that report? Which
10 wasn't filed, by the way, you just sent it to me via
11 e-mail.

12 MR. ELMOSA: Correct. Well, I understood
13 discovery was not supposed to be filed, but I don't
14 know if discovery was supposed to be stamped and
15 filed because when we had previously sent discovery
16 to the Commerce, it was sent back. So it was my
17 understanding that discovery is not supposed to be
18 filed.

19 JUDGE RILEY: My question is, is Mr. Hanson
20 going to testify to the foundation?

21 MR. ELMOSA: Yeah, he's going to testify to his
22 foundation, he's going to testify to the report and

1 what he did in his -- he visited the site. I don't
2 think that's in the report, but he will testify that
3 when he went and visited the site with the ComEd
4 represent -- I can also prepare a brief-- I mean,
5 just to make things safe -- just to make things
6 happy, I could prepare some kind of rough outline
7 exactly what they will testify to, yes, I can do
8 that, that's -- but can't prepare a detailed
9 description, but I will prepare an outline of what
10 they will testify to and what discussions that
11 Mr. Hanson had and which ComEd representative he was
12 with when he went out to the site.

13 JUDGE RILEY: Okay. That gives Counsel some
14 idea of who to bring in.

15 MR. ELMOSA: Sure we can do that.

16 MS. GRAHAM: Within a reasonable amount of
17 time, too. We are going to need a few weeks, at
18 least, before the next date to be able to review
19 that.

20 MR. ELMOSA: When would you want it by?

21 MS. GRAHAM: Well, I guess depends on when the
22 next date is set.

1 JUDGE RILEY: Yeah.

2 MS. GRAHAM: So if we could set that. And
3 also, just to be clear for the record, when Mr.
4 Elmosa say is amending this complaint, it's just to
5 change the entity name; correct?

6 JUDGE RILEY: That's correct.

7 MS. GRAHAM: Since we already put on our case,
8 so there's not going to be any changing of the
9 allegations that are already in the existing
10 complaint?

11 JUDGE RILEY: Absolutely not. No. The only
12 thing I will address is the change of the name to
13 match the Secretary of State's records and it says
14 Super Mexi Corporation.

15 And I don't know, Mr. Elmosa, if you
16 know how to access the Secretary of State -- it's a
17 Web Site called Cyber Drive.

18 MR. ELMOSA: Yeah, we have that.

19 JUDGE RILEY: If you put in the word "Super
20 Mexi Corporation," it will come up with the details.

21 MR. ELMOSA: Yeah, I have that.

22 JUDGE RILEY: Okay. Now, we've got to talk

1 about time. We're at the -- and, Mr. Elmosa, do you
2 have any idea how long it's going to take you to
3 prepare that brief?

4 MR. ELMOSA: I don't anticipate it to be a
5 complicated brief. I mean, I expect to maybe have a
6 brief outline of what they will testify. Now, let's
7 say that there is something in that outline that is
8 actually asked in the testimony, is it going to be
9 barred? I mean, are you guys limiting me to whatever
10 I put in the report and if I say -- it's a little
11 more complicated to me agreeing to that. I can give
12 you a brief outline, but if you're asking me whatever
13 I put on the direct and that is not in the brief, is
14 that going to be barred?

15 JUDGE RILEY: Well, it's not an easy question
16 to answer right now.

17 MR. ELMOSA: I mean, I don't know if -- I don't
18 know, I think they could have did a deposition and if
19 she still wants to do a deposition of either party, I
20 mean, that's a possibility; but, I mean, I can't
21 limit my brief simply to what's going to be in the
22 direct. I mean, there may be something in his report

1 or, you know, he keeps looking to the report, so I
2 can't -- but I don't think anything completely
3 outside the scope, but there might be something that
4 is asked on direct and I don't want that to be an
5 issue if it's not part of my -- in the report that
6 I'm going to provide or some kind of explanation of
7 what they're going to testify to.

8 JUDGE RILEY: No, we're not trying to file a
9 motion in limine here, but if you just give -- keep
10 it a broad outline, if you would and say that, you
11 know, he's going to testify to such and such, but may
12 also go into other areas.

13 MR. ELMOSA: I will do my best.

14 JUDGE RILEY: Okay. All right. Because, no, I
15 do not at this point want to make any kind of a
16 ruling about barring testimony; but, okay mand that's
17 with regard to Mr. Hanson; is that correct?

18 MR. ELMOSA: Yeah. And the other party, Saed.

19 JUDGE RILEY: Okay. And were you going to --
20 well, again, let's go back to how long it's going to
21 take you to get that outline to Counsel.

22 MR. ELMOSA: Well, how far out are we going for

1 a trial?

2 JUDGE RILEY: Again, that depends on how long
3 it's going to take --

4 MR. ELMOSA: I would say maximum, I mean,
5 14 days; but just to be safe, 21.

6 MS. GRAHAM: That puts us to March 12th.

7 JUDGE RILEY: Okay.

8 MR. ELMOSA: So where are we going out to?
9 We're at 19, 20, so we go to March 12th and I don't
10 know how long they want -- if they're going to review
11 it, I don't need to reply to it. Is it simply that
12 you guys are going to look over or are you going to
13 respond back? I don't...

14 MS. GRAHAM: I mean, Mr. Elmosa, I don't think
15 that we're going to be responding in writing to your
16 outline of testimony --

17 MR. ELMOSA: Okay.

18 MS. GRAHAM: -- assuming that you get it to us
19 in time. I mean, if you'll recall, we set a
20 discovery schedule, that wasn't followed, last year
21 and you were ordered to give us a report by
22 August 21st, which you didn't provide until January

1 28th. So I'm going assume that you're going to have
2 it to us in a timely fashion otherwise, you know,
3 we'll have to take action accordingly; but the ball
4 is kind of in your court here because you've had --

5 MR. ELMOSA: In regards --

6 MS. GRAHAM: -- an issue getting your expert
7 here twice now. So when can you be sure that your
8 expert is available?

9 MR. ELMOSA: Hold on. We're talking about the
10 report still, aren't we? We're not talking about the
11 hearing date, are we?

12 MS. GRAHAM: We're kind of talking about both;
13 right?

14 JUDGE RILEY: We can't set a hearing date until
15 we get the rest of this schedule set.

16 MS. GRAHAM: Exactly.

17 MR. ELMOSA: Okay. So March 12th should be
18 fine. I don't anticipate the outline that I'm going
19 to provide -- by Mr. Hanson to be -- it might be a
20 little bit more than what he put in the report and it
21 should be simple. In regards to Saed, I don't think
22 it's going to be that complicated either. He's just

1 going to testify to any conversations he had with the
2 ComEd representatives and what his knowledge of the
3 business is and the store is; but I don't anticipate
4 the expert's testimony to be much extended past the
5 report, but there might be -- he still didn't talk
6 about any conversation, which I'll address that in
7 the report what he will talk about.

8 JUDGE RILEY: Okay. Well --

9 MR. ELMOSA: I think March 12th should be
10 sufficient.

11 JUDGE RILEY: One flag just went off with me.
12 With regard to conversations with ComEd employees,
13 will he id- -- will you be able to identify who those
14 employees were?

15 MR. ELMOSA: I think so, yeah, because there
16 was -- ComEd -- we set up an appointment with them
17 back in -- I can't remember when.

18 THE COURT: All right.

19 MR. ELMOSA: When he was there with the ComEd
20 representatives and we set it up, I think, with
21 Mrs. Graham and there was representatives there when
22 he went out there.

1 JUDGE RILEY: Right. The conversations, again,
2 for now are hearsay.

3 MR. ELMOSA: Well, I'll put that in the
4 report --

5 JUDGE RILEY: Okay.

6 MR. ELMOSA: -- and then if it's somebody -- I
7 think it's already somebody they testified, but if
8 it's not, then I will address that.

9 JUDGE RILEY: Are you also saying that you
10 can't make March 12th a hard and fast date?

11 MR. ELMOSA: I think it should be fine. If
12 there's any issues, I will let you know a week before
13 that; but March 12th should be sufficient. It's 21
14 days.

15 JUDGE RILEY: All right. And how long do you
16 think -- you're going to have to wait until you get
17 the outline to know how much time you're going to
18 need?

19 MS. GRAHAM: Yeah, I mean, I think the main
20 issue -- I think our main concern, we can get people
21 ready to go within a reasonable amount of time, but I
22 think our main concern is doing the same thing again

1 since this seems to be the history in this case is
2 coming, being prepared and then the other side not
3 being prepared. So if we, you know, set a date and
4 we come down here with three, four five, however many
5 witnesses to rebut, you know, we better be ready to
6 go. So I think that's our concern. Our concern is
7 when is your expert available? Can you --

8 MR. ELMOSA: He gave me dates -- he gave me
9 dates in March, but I guess March is not going to be
10 available now, so he told me April is open for him
11 still.

12 JUDGE RILEY: If Counsel gets the outline, on
13 March 12, do you --

14 MS. GRAHAM: We can be ready any time in April.

15 MR. ELMOSA: The only issue with the week of
16 March -- April 5th, which is a Sunday through the
17 Sunday, I am on Spring Break with my family, so
18 either we can do it the week before or April 15th.

19 JUDGE RILEY: I'm more inclined to go the week
20 before but what -- did Mr. Hanson say -- what did he
21 say about March 31st?

22 MS. GRAHAM: Actually, I think Miss Beuchler is

1 unavailable on March 31st, according to my calendar,
2 anyway; so if we could do the 1st, 2nd or 3rd -- the
3 31st is okay.

4 JUDGE RILEY: The 31st is okay?

5 MS. GRAHAM: Yeah.

6 JUDGE RILEY: Do you think that will give you
7 enough time because that's --

8 MS. GRAHAM: Assuming that --

9 JUDGE RILEY: -- two weeks and change.

10 MS. GRAHAM: Assuming that March 12th is a hard
11 and fast date and we actually get that, then we can
12 be ready by the 31st, yes.

13 JUDGE RILEY: All right. Let's go with that.

14 Mr. Elmosa, that -- March 12 gives you a full --

15 MR. ELMOSA: We're going to what date now?

16 JUDGE RILEY: You're going to get the outline
17 of the testimony to Counsel by March 12 and you
18 have -- that gives you the better part of three
19 weeks. That gives you just about three weeks on the
20 nose.

21 MR. ELMOSA: All right. We're going to March
22 31st.

1 JUDGE RILEY: And March 31st that's over --
2 that gives over two weeks for respondent to suggest
3 the information sent.

4 MR. ELMOSA: If you could give me one second,
5 let me see if Paul Hanson answers his phone just to
6 verify because he gave me up to March 17th; but let
7 me just make sure that -- March 31st, give me one
8 minute to make a call.

9 (Break taken.)

10 MR. ELMOSA: He's not answering his phone. We
11 can set it for March 31st and I can let you know
12 by -- later on today to make sure I confirm it, but
13 he gave me all of April, so I don't know if you want
14 to just go with April 2nd or 1st date.

15 JUDGE RILEY: April 1?

16 MS. GRAHAM: Sure.

17 JUDGE RILEY: It's only one day off, so if he
18 said April 1 --

19 MR. ELMOSA: He said all of April is open.

20 JUDGE RILEY: All of April. I've got April 1
21 open.

22 MS. GRAHAM: April 1st works.

1 MR. ELMOSA: Okay. We'll set it for April 1st.

2 MS. GRAHAM: 11:00 o'clock with work for your

3 expert or do you want to give him more time to get

4 down here?

5 MR. ELMOSA: Well, he does come by Amtrak, so

6 if you want to be safe, then let's do the afternoon

7 just to make sure he's here. I mean, that will be

8 better.

9 JUDGE RILEY: Could we do a 1:30 start?

10 MR. ELMOSA: That's fine.

11 JUDGE RILEY: So March 12, you'll have the

12 outline to Respondent's Counsel in March -- excuse

13 me, April 1 we will convene at 1:30. We will convene

14 for hearing.

15 MR. ELMOSA: Okay.

16 JUDGE RILEY: I am advised to admonish you,

17 Mr. Elmosa, I am not the least bit disposed to

18 continuing this thing again. So, really, nail

19 Mr. Hanson and your other witnesses down and tell

20 them they've got to be here, they've got till 1:30 to

21 get into town.

22 And in the meantime, please get that

1 motion filed to change the caption to reflect the
2 Secretary of State name and also the extension.

3 MS. GRAHAM: Mr. Elmosa, I'll send you a copy
4 of the motion to extend. I have one that I could use
5 that's readily available and then if you could just
6 get that back to me in a timely fashion --

7 MR. ELMOSA: Hold on. He's on the other line,
8 Paul, so just hold on.

9 (Break taken.)

10 MR. ELMOSA: Yeah, April 1st fine with him.

11 JUDGE RILEY: Okay. Great.

12 I'd just like to reiterate, file the
13 motion to change the corporate name to reflect what
14 name on the Secretary of State records.

15 And, Counsel, you will send in the
16 form for the extension.

17 MS. GRAHAM: That's right.

18 Mr. Elmosa, I'll e-mail that to you,
19 if that's fine and you can send it back to me and
20 I'll file it with the Clerk.

21 MR. ELMOSA: I will. Thank you very much.

22 JUDGE RILEY: All right. And we are set for

1 hearing on April 1 at 1:30 p.m. and continuances are
2 only granted only for the utmost of compelling of
3 reasons. Thank you very much.

4 (Whereupon, the hearing in the
5 above-entitled matter was
6 continued until April 1, 2015
7 at 1:30 p.m. for hearing.)

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